STATE OF MICHIGAN

COURT OF APPEALS

COMMUNITY RESOURCE CONSULTANTS, INC.,	UNPUBLISHED June 22, 2010
Plaintiff-Appellee,	
v	No. 288269 Macomb Circuit Court LC No. 08-000706-AV
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	
Defendant-Appellant.	

Before: Hoekstra, P.J., and Stephens and M.J. Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted[1] an order affirming both the district court's denial of defendant's motion for directed verdict and the district court's exclusion of evidence. We affirm in part and reverse in part.

Plaintiff submitted no-fault personal injury protection claims to defendant as a care-manager vendor to four individual insureds: Humberto Calzada, Cynthia LaRose, Nexhinge Shehu, and Sherri Williams. Defendant refused to pay, claiming, in part, that the submitted bills lacked sufficient detail. The four cases were consolidated at the district court. After the close of plaintiff's proofs at trial, defendant moved for a directed verdict. The district court denied the motion. During defendant's presentation of its case, defendant offered to get an exhibit admitted into evidence. The district court excluded the exhibit as not relevant. After a jury returned a verdict in favor of plaintiff, defendant appealed to the circuit court. The circuit court affirmed the district court's rulings on both the directed verdict and evidentiary issues.

Defendant first argues that the motion for directed verdict was erroneously denied. We agree for one of the four claims.

[1] Order granting leave to appeal: *Community Resource Consultants, Inc v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, entered March 13, 2009 (Docket No. 288269).

A lower court's decision on a motion for directed verdict is reviewed de novo. *King v Reed*, 278 Mich App 504, 520; 751 NW2d 525 (2008). The evidence presented up to the time of the motion is viewed in a light most favorable to the nonmoving party to determine whether a question of fact existed. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 455; 750 NW2d 615 (2008). If reasonable jurors could honestly have reached different conclusions, then the motion is properly denied. *Id.*

MCL 500.3105(1) provides that "an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." Plaintiff sought payment pursuant to MCL 500.3107(1)(a), which provides for recovery of personal protection insurance benefits for "[a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." Plaintiff bears the burden of establishing that the services provided were compensable. *Healing Place at N Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 57; 744 NW2d 174 (2007).

Defendant claims that plaintiff failed to offer any admissible evidence establishing that the insureds' injuries arose out of any automobile accident. Plaintiff's evidence consisted almost entirely of testimony from Charles Roberts, the owner of plaintiff corporation.[2] Defendant contends that Roberts's testimony was inadmissible and should not be considered since it was hearsay. In other words, defendant claims that Roberts was merely repeating out-of-court statements contained in various files and reports when he testified regarding the four insureds. However, a challenge to the admissibility of Roberts's testimony was not contained in defendant's statement of questions presented; thus, the issue of the admissibility of Roberts's testimony is abandoned on appeal. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008). As a result, Roberts's testimony will be considered as proper evidence.

Roberts stated that plaintiff conducted "multiaxial evaluations" of each of the insureds. These evaluations essentially summarized each of the insureds' circumstances, which included "pre-accident history," "how they were before the accident," and how they were after the accident.

Roberts also testified specifically regarding the four insureds. First, Roberts stated that Calzada was involved in an "accident" on October 31, 2003. Roberts further testified that Calzada suffered a traumatic brain injury, which resulted in him having very poor decision-making ability. The testimony did not specify whether Calzada was involved in an *automobile*

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[2] We note that there is other evidence presented through plaintiff's cross-examination of a defense witness that elicits the fact that automobile accidents were involved with each of the insureds, but this evidence was introduced *after* the motion for directed verdict was made. Not being admitted at the time of the motion for directed verdict, this evidence is not properly considered. *Silberstein*, 278 Mich App at 455.

accident, or whether the brain injury *was a result* of the accident. Looking at the evidence in a light most favorable to plaintiff, a jury could have reasonably inferred that the injury was sustained during the accident because Roberts discussed the injury *at the same time* he discussed the accident. Similarly, the repeated references to "the accident" could lead a reasonable juror to conclude that the accident was a motor vehicle accident. Therefore, it was not erroneous to deny a directed verdict with regard to plaintiff's claim related to the insured, Calzada.

Second, Roberts testified that LaRose suffered a brain injury as a result of a *car* collision. Roberts specifically stated that the case management services provided to LaRose were "related to the automobile accident." Hence, this explicit reference to an automobile accident makes a directed verdict inappropriate with regard to plaintiff's claim related to the insured, LaRose.

Third, Roberts testified that Shehu suffered a shoulder injury that required surgery. Roberts also stated that a major factor in Shehu requiring case management was the fact that Shehu did not speak English. There was no testimony directly linking Shehu to *any* accident, let alone an automobile accident. However, Roberts testified regarding Shehu's multiaxial evaluation. That testimony included descriptions of both "pre-accident history" and post-accident status. Thus, similar to the Calzada situation, it would be reasonable to infer that Shehu was injured in an automobile accident. However, unlike the Calzada claim, the lack of any testimony linking her need for services to the accident is fatal. The evidence merely demonstrated that the need for services arose from the fact that Shehu was not an English speaker. Consequently, the lower courts erroneously denied the motion for directed verdict with respect to Shehu.

Fourth, Roberts testified that Williams was in an accident on August 2, 2005. Roberts testified that Williams suffered back injuries along with a traumatic brain injury. This testimony was similar to the testimony regarding Calzada, in that there was no detail regarding the type of accident involved. However, giving Williams the same permissible inferences as Calzada, a jury could have concluded that she was also involved in an automobile accident. Therefore, it was not erroneous to deny a directed verdict with regard to the Williams claim.

Therefore, when viewing the actual evidence presented before the motion for directed verdict was made, in a light most favorable to plaintiff, there was no issue of fact with regard to insured Shehu Accordingly, the trial court should have granted the motion for directed verdict with respect to her. However, the motion was properly denied with respect to LaRose, Williams and Calzada.

In light of our disposition of plaintiff's case with respect to the insured, Shehu, we need not consider defendant's other issue pertaining to the admissibility of an exhibit involving the Shehu claim. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998) (issues where no meaningful relief can be granted should not be decided by this Court).

Affirmed in part and reversed in part.

/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens
/s/ Michael J. Kelly